(34-P)

File No. 107-04

Serial Nos. 1 to 6

190 5

GENERAL AND REVENUE SECRETARIAT.

(Jeff. Rec.)

Part A: Manuscript
for Jeffs Rec 1905

Serial Nos. 1 to 6

Petition for Compensation by the decision of the Civil Court or the latter by the former and to the Collector or otherwise to Final Disposal Document Concerning Corporate Civil Court

G.R. S. 117 904.

GENERAL AND REVENUE SECRETARIAT.

( )

NOTES

File No. 607-04

File Heading.

Whether the Deputy Comr. is vested by the ~~Collector~~ on the latter by the former
decision of the Civil Court ~~& Vice Versa~~ as to the
to Stamp only
liability or otherwise of a document coming before
Civil Courts

From The Dy. Comr. of the Nilgiris Dist.

Letter No. 811/565 Dated 26/4/05 ~~Received 28/6/05~~

Diary No. 44/8 Enclos. 2 Spare Copies. 1 Serial No. 1

Brief Abstract of Letter.

States that the subject of Thumboe forwarded to him
2 plaintation leases dtd. 1st Feb. 1905 and the deeds have been registered
that they were certified to him under Sec. 40 as exempt
from Stamp Duty, & that the Subjr. was ~~requested~~
a declaration under Sec. 6(2), of the stamp Act regarding
~~them~~ one definite orders ~~were~~ on the subject.

NOTES AND ORDERS.

Under Sec 40(1)(a) if the Dy. Comr.
is of opinion, that any instrument
sent to him under Sec. 38(2) is duly
stamped, it is to certify accordingly
with duty the Mark Counter &c.

Notes—First sheet.

MGCPB—30,000—17-2-05

G.R.S. 12.
General and Revenue Secretariat.

S. P File No. W, of 1904

Serial No.

certificate thereon that it is duly stamped or that it is not so chargeable as the case may be and — Sec. 40(2) lays down that such certificate unless made by the Court otherwise shall for the purposes of this Regulation, be conclusive evidence of the matters stated therein In the present case the subject of Summary has removed the certificate made by the Court of Himmatgarh that the document is exempt from Stamp duty but remains under dispute that it is not a summary record under Sec. 40(2) The Judicial Court feels doubt whether the Subject is competent to do this and whether this certificate made under Sec. 40(1)(a) is not final and solicits definite orders in the subject

Closely following the words of Sec 40(2) it cannot be held

NOTE—Contn. sheet.

MGCPB—50,000—17.2.05

G.R.S. 12]
General and Revenue Secretariat.

S.R File No. 607 of 1904

Serial No.

I am of opinion that the Delhi Court Certificate is a final order against which no appeal lies. The Sub Judge Camp at Allahabad received the Declaration under Sec. 6(1)(2) unless the Case has come up before him as an Appellate Authority or there has been a requisition for it from the Delhi Court. But in the Case in question the Sub Judge has received the Declaration not upon the requisition from the Delhi Court. Whether he has done so as an Appellate Authority it is not clear

~~Put up for orders~~ The documents ~~ordered~~ submitted by the Delhi Court with the letter ~~...~~ dated ~~...~~ do however seem to be sufficient from Stamp duty as certified by the Delhi Court.

~~Put up for orders~~

10/5/05

I.C.K. B.A.
10.5.05

NOTE—Contn. sheet.]

MGGPB 50,000 17.8.04

(4)

S.R File No 107 of 1904

Serial No.

4) The facts of the case are not clear.

The cases in question appear to have been first produced before the Mamlatdar in Misc. Case No 266 (1901-02) decided the 7 July 1902. On Mamlatdar's application the Mahalkari appears to have forwarded the documents to Deputy Collr who on the 31 March 1905 confirmed them were exempt from Stamp Duty. It must here be observed that the Mamlatdar himself was competent to admit the documents in evidence on payment of the proper stamp duty and penalty under Sec 38 cl (1) & Clause (2) of the same section under which references ordinarily have been made to the Dist. Deputy Collr on the 1st March 1905, vide ... I submit a copy of the case with the present, in which the Court or Officer receiving a document has authority to receive it and admit it in evidence on payment of duty and penalty

5) See 61 (1) of this Act Court of Session or appeal Presume that after Deputy Collr returned the documents with his certificate and Mamlatdar had disposed of the case the matter came up before the Sub Judge in appeal.

NOTE.—Contn. sheet.

MGCPB—50,000—17-2-05

Serial No.

it so we was competent to make the declaration referred to in present communication of the Govt. & the case came now when the Deputy Commr is that increased in clause (4) of sec 6

noted Secy
J. Satyanarayana Chetty 29

to the Dy. Secy. for favour of perusal B. K. Venkatavaradiengar 16.5.1905

16-5-05

Received 16/5/05
Recd 17/5/05

Submitted 16/5/05 The Govt are unable to express an opinion at this stage The entire correspondence between the Govt. of India & Govt. of Madras may be obtained from the Collector & the nature of the proceedings in which the deeds were executed, and that in the course of which the Sub Collr recorded a declaration under S. 61(2) of the Stamp Act

K. S. Chandra Aiyar Dy Secy 16.5.05

Satyanarayana Chetty 17-5-05

Submitted 29/5/05 Call for the records

31.5.1905

Draft sent

J. Satyanarayana Chetty 11-5-05

NOTE—Contn. sheet

B. MGCP—50,000—17-2-05

G.R.S. 127
General and Revenue Secretariat.

S.P File No. 11 / of 1904

Serial No. 2

To the Dy. Comrs. Shimoga
No H 8204 & the 5/6/05
Calls for the above Papers
& information

3 From the Dy Comr Shimoga
No 614-714 & the 12/6/05
Forwards the Correspondence
between himself & the Sub Magr
of Shimoga regarding the loss
of Khatas. Puts on the documents
in question and states that they
(documents) were produced
by the Sub Magr in Khatas Suit
No 70 of 04-05 (a copy of judgment in
the records) & that the decree of
the Munsiff of the ~~of~~ Taluk

7) The document was produced
before the Munsiff in Miscl Case No
266 of 04-05 & then went up to the
Sub Magr with an appeal &
his judgment in the appeal Suit
he remarked that "the Munsiff
was wrong in admitting them
in evidence without necessary
proof and finally on them
"Further the Munsiff was wrong

Note—Contn. sheet

MGCPB—50,000—17-2-05

G.R.S. 127
General and Revenue Secretariat

SP File No. 607 of 1904

Serial No.

"In the first that they were not registered. The Sub Registrar perhaps erroneously supposed that they fell under the exemption and ordinarily registered them. They will be now impounded & sent to the Dy Comr of Hissar in due course. The documents were accordingly sent to the Dy Comr. He thought that they fell under exemption No. 33 Sch. I of the Stamp Act, recorded his certificate on the envelope & that they were sent to him by the Sub Registrar under Sec. 38(2) and returned them to the Sub Registrar with his Docket No 2338 of the 20. March 05. Thereupon the Sub Registrar recorded an order to the effect that his remarks in his statement were a declaration made under Sec. 61(2) & that the documents & copy of his statement were sent to the Dy Comr under Sec 61(3) and that the documents are again sent to the Dy Comr that he may take action under Sec

Flag M
Flag M
No 1048 27/3/05

NOTE—Contn. sheet

G.R.S. 121

General and Revenue Secretariat.

File No. 607 of 1904

Serial No. 61(4) Memorandum to be submitted by Secretary for his decision

Submit the file with the opinion of Mr. Satyaraj Chetty

7) The declaration made by a Court of appeal on reference under section 61 of the Stamps Regulation does to be of a quasi-judicial nature, and, therefore, the opinion expressed of the Deputy Commr. would not be binding upon the Court in the exercise of its discretion.

On the other hand, neither is the Court's declaration itself final. For, should the Deputy Commr. seek disqualification, it is open to him to refer the matter under section 56 for the decision of Govt. who may in turn seek the decision of the Chief Court under S. 57.

8) In the case of the document Exhibit R2D I am not sure that the sub-registrar was right in demanding to levy the application of the exemption provided in Article 33, on the ground that they were not used within three months of the date. For, if the exemption clause is carefully read

MGCPB—50,000—17-2-05

G.R.S. 12]

General and Revenue Secretariat.

(9)

80 File No. 101 of 1904

Serial No.

we shall find that, whatever the term may be, the exemption can be claimed if the annual rent does not exceed 100 Rs.

1) The question being one of some importance I would suggest that a reference be made to the Chief Court.

Sd/ Alexander Cardew 20.6.05

submitted to Secy

Sd/ 20/6/05

submitted to Secy

Sd/ 21-6-05

for a draft to the Chief Court in consultation with the Dy. Secy detailing the case & views in opinion of the Govt.

Sd/ B.K. Venkata Varao 2.6.1905

Draft submitted.

Sd/ B.B.a 23/6/05

Sd/ 27-6-05

Should not transcriptions in connection with the two cases be embodied in the draft reference to Chief Court, written to date in order to find an idea of the nature of the documents.

Sd/ 27-6-05

Orders.

The remarks made in the draft is also the understanding of the documents required. As the documents also go with the letter a regular translation is not necessary.

Sd/ 27.6.05. AK

1.10

NOTE.—Contn. sheet.

MGCPB—50,000—17-2-05—IT.

G.R.S. 12]
General and Revenue
Secretariat.

File No. 10 / of 1907

Serial No.

Minute put up regarding draft
revised
8-6-05

Revised draft submitted

Draft
28/6/05

Draft put up through the
Asst Secy - to Satyagraha Cheltr

28-6-05

Minute is all right
K. S Chandrasekharaiyer
Hon'ble

Draft submitted to the
Hon'ble the Colonial Secretary

29.6.1905

Draft may kindly
be approved
29.6.05
C.M.
3/7/05

3/7/05

Draft approved by the Hon'ble Sahib

10

To
The Protector of Immigrants
Durban

No. 2323 dated 11th November 1905

Reference the above case
for the decision of the Asst Colonial
Secretary to the Natal Govt

NOTE.—Contn. sheet.]

G.R.S. 121

(11)

General and Revenue Secretariat.

S/4 File No. 60, of 1904

Serial No. 5

From the Registrar Chief Court- No 1565 of the 25/8/- 57

Forwards a copy of the opinion of the Hon'ble Chief Court in civil reference Case No 15 of 1905-06 & requests that the documents in question are exempt from stamp duty under the terms of Sec. 2(16)(b), & the exemption to article 33, Sch. I of the Stamp Act, & that the question whether the certificate of the Hon'ble Court should have been held final by the subordinate Court is not one which arises on a reference under Sec. 57 of the Regulation & that it is not convenient to decide it on such reference.

Submitted for orders to-day

J. J. Sahasrabudhe Asst Secy

28-8-05

J.G.K

28/8/05

W.K. 29/8/05 Sent copy of opinion of the Hon'ble Court in the H.C. Reference

R. K. Venkatarama Ayyar Asst Secy 29.8.1905

29/8/05

Draft ruled accordingly

J.G.K. 29/8/05

W.K. 29.8.05

1000—50,000—17-2-05

NOTE—Contn. sheet.

G.R.S. 12]

(12)

General and Revenue Secretariat.

S/L File No. 107 of 1905

Serial No.

13) The point decided by the Chief Court is to understand and if to general application in regard to Amendment Rules that I venture to submit that the Correspondence together with the Opinion of the Advocate General be printed in extenso and communicated to all Deputy Tahsildars of the Inchegeri Division at Nerasopa and also published in the Mysore Gazette for general information

Draft noted to Secy.

J. Satyanarayana Chetty 31-8-05

Addl. Secy. 31-8-05

Secy. to the Govt.

Councillor B. K. Venkatasubbaraoiah 31-8-1905

31-8-05

31-8-05

C.M.R. 1/9/05.

4-9-1905

8/9/05 5-9-05 4-9-05

Draft by the Dewan Saheb

B. K. Venkatasubbaraoiah 6-9-05

6

NOTE.—Contn. sheet.]

MGCPB—50,000—17-2-05

G.R.S 127

General and Revenue Secretariat.

S R File No. 107 of 1904

Serial No.

6 To The Dy Commr Shimoga Dt
The Dy Commrs of other Dts
The Superintendent of Police
& The Registrar Chief Court
Lr No H/2512-21 dd 16th Septr 04
Communicates the following opinion
of the Chief Court for information
& guidance

MGCPB—50,000—17-2-05

P. 4478

Received 29.4.05

1904

From M. S. Narasimhachar Esq
Commissioner
Shimoga District

To B. K. Venkata Varada Iyengar Esq
Secretary to Govt of Mysore
Genl. and Rev. Depts

Dated 26th
Despatched } April
Received 1905

General No. 811
No. 565

Inclosure No. 2

Soliciting orders as to
whether he as Commissioner
is bound by the decision of the
Civil Court or vice versa
as to the liabilities or otherwise
to Stamp duty in
Coming before the Civil Court

SK
565
2

Deputy Commissioner's Office
Shimoga District.

Dated, Shimoga, 26th April 1905.

From
M. S. Narayana Rau Esquire
Deputy Commissioner
Shimoga District

To
B. H. Venkataravada Iyengar Esquire
Secretary to the Government of His
Highness the Maharaja of Mysore
General and Revenue Department
Bangalore.

Serial no

Letter no- S:1-565, Dt: 26th April 1905

Sir,

I have the honor to relate that the Sub Judge of Shimoga forwarded with his docket No 138 of 1st March 1905 two impounded plain paper lease-deeds under the Stamp Rules. The lease deeds although executed on plain paper have been registered in the Sub Registry Office, Sagar, probably under the impression that they were exempt from Stamp duty under Article 33 of Schedule I of Mysore Stamp Regulation II of 1900. As I was also of the same opinion, I recorded a certificate under Section

40

x Instrument remark ... is liable to duty under 35 (a) ... 20 ...

Conveyance No 50 ...

D

40 And returned the deeds to the Sub-judge who has drawn up a proceedings to the that he recorded. ... under Section 61 (2) of the Stamp Act, that the deeds were Chargeable with duty x As they do not fall under exemption to Article ... And have returned the instruments for taking further action.

The question for decision in the present case is whether the Deputy Commissioner is bound by the decision of the Civil Court or whether it is the Civil Court that should be bound by the decision of the Deputy Commissioner as to the liabilities or otherwise to stamp duty of a document coming before the Civil Courts and I beg to solicit definite orders on the Subject.

The 2 deeds in question are herewith forwarded for reference and kind return.

I have the honor to be
Sir
Your most obedient Servant

[illegible]

A. [illegible] Deputy Commissioner Shimoga

G.R.S. 26]

File No 107-m

Serial No 2

Diary No. of letter replied to 1478

Letter No. H 8204 dt the
S.R. 107-04-2
from B.K. Venkata. vakadiengar Esqr 5th June 1905
Secy to Govt Genl & Rec. Nilgiris
re petty Comm of the Shimoga Dt

General and Key Secretariat

(J. R.

the 5th June 1905.

To

Date of issue 1-6-05

Signed by Mr Sampagi Key

5/6/05

Acknd & Note

Letter No: 811/665 dt the 26 April 1905, Submitting opinion as to whether the Dy Commr is bound by the decision of the Civil Court ~~or the Revn~~ as to the liability or non-liability of the Stamp duty of the document impugned before the Civil Court, & am to request you to forward to this Office the entire correspondence,

over.

SUBJECT.

in original, between yr the
Sub Judge and yourself
together with the information
as to the nature of the
proceedings in which
the deeds were first
impounded and of that
in the course of which
the Sub Judge recorded
a declaration under
Sec 61(2) of the Stamp
Regulation The documents mentioned in your letter under
reference are returned for reference & resubmission.

Chandra

31-5-05

For Secretary.

List of enclosures,

31/5

31/5.

Copied by

Examined by

MGCPB—20,000-19-12—04.

Ch 101. 24-8(3) 14/6/05

1905. SR

From M. S. Narayana Rao Esq
Dy Commissioner
Cuddapah Distt

To B. A. W. Mahaveer Esq I.C.S.
Secretary to the Govt of Madras
Genl & Rev Depts.

Dated 12 June 1905.

Despatched

Received

General No. 1014
No. 714

Enclosure No. 6.

Forwarding the marginally noted
Communications for submission
to the Government on Sub-
Registrar Chennakothapalle, dated 5.6.05
to his No 718/204
SRA 107-04-2

No 1014 End
714

Deputy Commissioner's Office
Shimoga District
June 1905

From

M. S. Narayana Rao Esq
Deputy Commissioner
Shimoga District

To

B. K. Venkatavarda Iyengar Esq.
Secretary to the Govt of Mysore
General and Revenue Depts

Sir,

Letter no. 1014-714-3 dtd 12th June 1905

With reference to your letter No. H 8204 / SRA 107-04-2 dated 5th June 1905 calling for the entire correspondence in original between the Sub Judge of Shimoga and this office regarding the levy of Stamp duty on certain documents, I have the honour to forward herewith the marginally noted communications on the subject.

Sub judge's docket No 138 of 1st March 05
This office reply No 2338 of 25-3-05
Sub judge's order No 204 of 27-3-05

2. The documents in question were first impounded by the Sub Judge in Civil appeal No 70 of 1904-05 against the decree of the Munsiff of Sagar on the file of his Court. Copy of the judgment is in

Serial No 3

the defendant 12 thereof forms the declaration

3 The documents returned with the letter [illegible] not necessary

[illegible] the honourable

Sir,

Your [illegible]

[illegible]

For Registrar in Admiralty

Swansea

Record's Copy

File No. 697

Serial No. 1/4

Diary No. or letter replied to 5/22

No. H 32.

From B.K. Venkatasamaiya Secretary to the Govt of H.H the Maharaja of Mysore

To the Registrar and Chief Court of Mysore

General and Rev. Secretariat

Dept. Stee

the 11th July 1905.

Date of issue

Signed by W Satyanarayana Clerk S.R.

Letter No H.323-S.R.-07-04-4 dt 11th July 1905

-S. No 4

I have the honor to request you will be so good as to lay the following statement of a Case for the decision of the Chief Court under Sec. 57 of the Stamp Regulation No. II of 1900

1. The Munsiff of Nagar in Mis. Suit No. 266 of 1901-02 admitted in evidence without objection two unstamped but registered documents marked Ba

over.

SUBJECT.

"D" purporting to be
leases containing stipu
lations as specified below

Ex "B" the executant
undertakes to cultivate
~~the~~ lands therein
mentioned for a period
of 2 years & to pay to the
lessor every year a
fixed rent of Rs. 60/- worth
of paddy.

Ex "D" the stipulation
is to cultivate the land
therein mentioned for
4 years and to pay an
annual rent of Rs 50/-
worth of paddy.

3. In appeal the Sub.
Judge of Shimoga was
of opinion that both
the documents were
subject to payment of
stamp duty and penalty
and accordingly
remanded the

List of enclosures,

Copied by

Examined by

MGCPB—20,000-19-12—04.

GENERAL AND REVENUE SECRETARIAT.

(*Continuation Sheet draft form.*)

and forwarded them to the Dy. Commissioner

4 The Dy. Comr. c= Centripeta under sec. 40 that the documents fell under the exception to Art. 33, Sch. I of the Stamp Regulation & sent them back to the Sub Mohr who again returned ~~the docu-~~ them ments to the Dy. Comr. with a declaration under Sec. 61(2) & Copy of his Judgment which was in these terms

"The Munsiff was c "wrong in admitting them "in evidence without "receiving Duty and "Penalty on them. Exhibit "B" is liable to duty as a "bond on the amount of "Rs 600 under art 33(b) ii "and exhibit D) as a Con- "veyance on the amount "of Rs 501- under art 33(a) iii "of Sch. I of Stamp Regn

II of 1900".

6. The Dy. Comr has taken exception to the action of the Sub Judge on the ground that under cl. 2, Sec. 40 his certificate is conclusive & final as to the matters therein stated and raised the question whether the Dy Comr is bound by the decision of the Civil Court (Sub Judge) or whether the latter should be bound by the certificate already made granted by the Dy Comr.

b. The Govt are of opinion that the order made by a Court of appl or reference under Section 40 of the Stamp Regulation seems to be an act of a quasi-judicial nature and therefore, the opinion or certificate of the Dy Comr need not be binding on the Court in the exercise of its discretionary powers.

7. On the other hand neither is the Courts

G.R.S. 27]

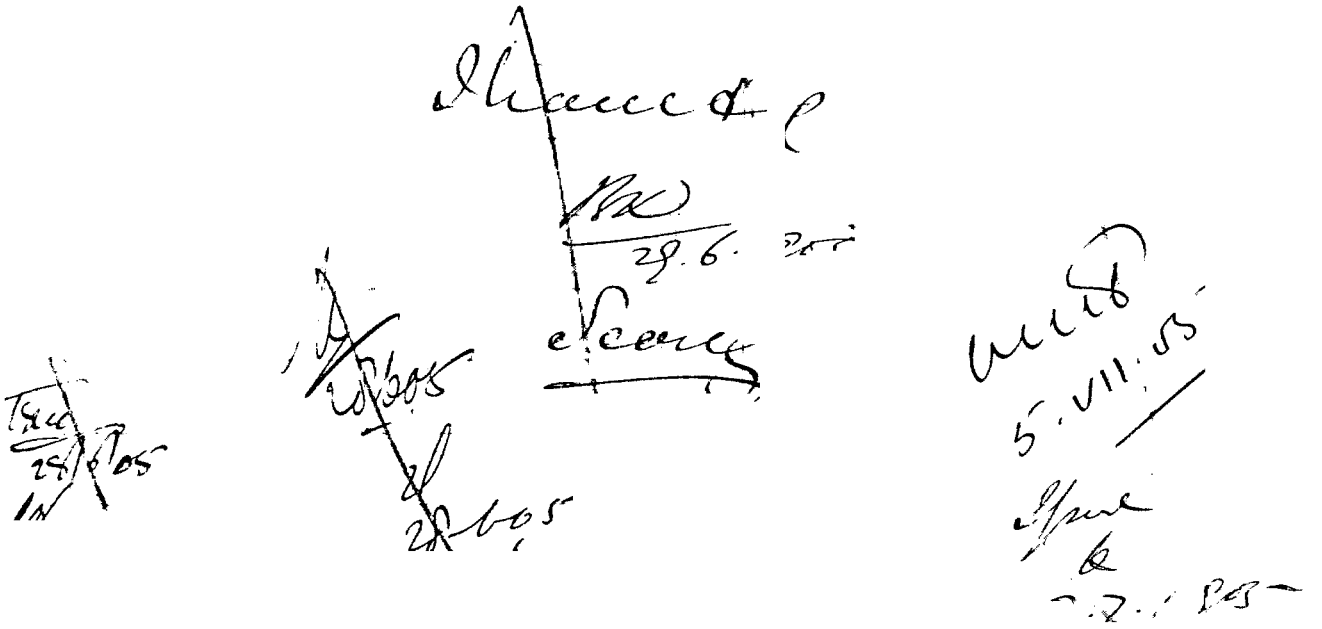
GENERAL AND REVENUE
SECRETARIAT.

(*Continuation Sheet draft form.*)

Courts declaration
itself Annals for would
the Court feel dis-
satisfied with it, this
open to him to reopen the
matter under Sec 56
for the decision of your
who may in turn seek
the decision of the Chief
Court

8. In the Case of the
documents now proposed
to above it Cannot be
said that the principle
one regret in denying
to them the applicability
of the exemption provided
in Article 33 on the ground
among others that they
were for fixed terms
exceeding one year. For
if the exemption clause
is carefully read it
will be found that
whatever may be
may be the exemption
can be claimed if the
amount of annual rent
does not exceed Rs 100/

9. The two documents referred to above are the correspondence received from the Dy. Comr. are herewith forwarded for reference & obliging return.



N 1365 & 2 Encls 57 correspondence,

S.R. 107

5

A 485

Bangalore, 25th August 1905.

From

V.A.Rajaratna Mudaliar Esquire.

Registrar, Chief Court of Mysore.

To

B.K.Venkatavaradaiengar Esquire,

Secretary to Government, Gl.& Rev.Deptts.

Semal no 5

Letter no 1365-57. Dated 25th August 1905

~~Sir,~~

Adverting to your letter No.Fl.323/S.R 207 S.No 5

04-4 dated 11th July 1905. I am directed to forward copy o

opinion in Civil Referred Case No.1 of 1905-6.

The enclosures received with your letter are herewith returned.

I have the honor to be,

Sir,

Your Most Obedient Servant;

V.A. Rajaratna Mudaliar

REGISTRAR.

Cng

Enclosure

In the Chief Court of Burma at Rangoon

Monday, the 21st day of August 1905

Present.

The Hon'ble Mr. Justice A. E. Haley, Chief Judge

The Hon'ble Mr. Justice A. Rangaswami Aiyar

and

The Hon'ble Mr. Justice H. V. Nimpuradamma, Judge

Civil Referred Case No. 1 of 1905-06.

In the matter of a reference by Government for adjudication of Stamp duty with respect to two documents need by the Sub-Judge of Akyab in appeal to be liable to duty under Article 3 (a) (11) and 33 (1.a.) (iii) of Schedule I of the Stamp Regulation.

Exhibits B & D in this No 266 of 1901-02 on the file of the Court

Upon hearing the case as stated in the Secretary's Letter No 711 23/3. R. dated 11 July 1905 (No. 107 of 1904-4) the Court pronounced the following

Opinion.

This is a reference under section 5 (1) Regulation II of 1900 by the Chief Court for the opinion of this Court (Supreme Authority for the opinion of the Chief Court.

The two documents sent under reference

are marked B and D. They are agreements to cultivate at reserved rents not exceeding 100/- in each case. In our opinion they are exempt from Stamp duty under the terms of Section 2 (16) (4) and the exemption to Article 33 Schedule I of the Regulation

A further question raised in the reference is this. The Munsiff of Sagar admitted the documents unstamped without objection. The Subordinate Judge of Shimoga was of opinion that the documents were subject to payment of Stamp duty and penalty, and therefore impounded and forwarded them to the Deputy Commissioner. The latter returned them to the Subordinate Judge with an opinion that they were exempt from Stamp duty. The Subordinate Judge returned them again to the Deputy Commissioner with a declaration under Section 51 (2) of the Regulation. The Deputy Commissioner has raised the question whether he is bound by the finding of the Sub Judge or

whether

whether the latter is termed the Certificate of the Deputy Commissioner. This question has been also referred to us with the opinion that the subordinate Judge was not bound by the Certificate of the Dy. Commissioner and that if the latter is dissatisfied his proper course is to refer the matter to Government that is to the Chief Controlling Authority who may in turn refer the question of the Civil Court. We think that since Section 11 of the Regulation allows any case as to the amount of duty with which an instrument is chargeable coming to the notice of the Chief Controlling Revenue Authority to be referred by the latter to the Civil Court that the present reference has been properly made as to the amount of duty there charged. The question whether the certificate of the Deputy Commissioner should have been held final by the Subordinate Judge is not one which properly arises on reference under Section [illegible] of the Regulation, and we do not think it is convenient to decide it on such reference

True copy.

A Nagaratnam

Registrar.

G.R.S. 28]

File No. 107/04
Serial No 6

Diary No. of letter replied to 885

Proceedings of the Government of His Highness the Maharaja of Mysore.

Jeruel no 6. No. JE 2012-21 — P. 107/04-6. Dated the 16th September 1905

GENERAL AND REVENUE SECRETARIAT.

READ.—The following papers:

I Letter No. 811 dated the 26th April 1905 from the Dy. Com.r of Shimoga (to be printed in extenso)

II Letter of the Registrar of the Chief Court No. H.325 dated the 11 July 1905 (to be printed in extenso)

III Opinion of the Chief Court in Civil Referred Case No. 1 of 1903-06 received with the Registrar's letter No. 1365 dated the 25th August 1905

, the 16th September 1905.

Date of issue —do—

Signed by M. Sahyaraj Chetty

No JE 2012-21

ORDER THEREON.—No.

16th September 1905

The foregoing opinion of the Chief Court will be communicated to the Deputy Commissioner of Shimoga with reference to correspondence ending with his letter No. 1014 dated the 12 June 1905 and to

over

16.9.1905

SUBJECT

MGCPH—5,000—21-6-04

all Deputy Commissioners of Districts
and also to the Inspector General
of ~~Education~~ Registration for
information and guidance.

~~A letter to these Collectors will~~
~~also be forwarded in the ordinary~~
~~Gazette for general information.~~

31. 8. 1905
Secretary

31-8-05

To the Deputy Com: of Jhansi District returning the
file received from him
The Deputy Commissioners of other Districts
The Inspector General of Registration
The Registrar, Chief Court.

ORIGINAL.

1905

FILE No. 107 OF 1904-0

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

PROCEEDINGS OF THE GENERAL AND REVENUE DEPARTMENT

FINANCIAL (SEPARATE REVENUE)

SEPTEMBER

"A" Collection Serial Nos. 1—6

Whether the Deputy Commissioner is bound by the decision of the Civil Court or the latter by the former as to the liability or otherwise to stamp duty of a document coming before a Civil Court.

TABLE OF CONTENTS.

Serial No. of File	Number and date of letter and content	References	Page in A Progs.
1	From the Deputy Commissioner, Shimoga District, No. 811—568, dated the 26th April 1905. States that the Sub-Judge of Shimoga forwarded to him two plain paper lease deeds that have been registered and that they were certified to by him under Section 40 of the Stamp Regulation as exempt from Stamp duty, but that the Sub-Judge has recorded a declaration under Section 61 (2) of the same Regulation, and requests therefore definite orders as to whether the Deputy Commissioner is bound by the Civil Court or the latter by the former in questions of the liability of a document to stamp duty		1
2	To the Deputy Commissioner, Shimoga District, No. Fl. 8204, dated the 5th June 1905 Requests the submission of the entire correspondence in original between the Sub-Judge and himself together with the information as to the nature of the proceeding in which the deeds were first impounded and of that in the course of which the Sub-Judge recorded a declaration under Section 61 (2) of the Stamp Regulation.		1
3	From the Deputy Commissioner, Shimoga District, No. 1014—714, dated the 12th June 1905. Forwards the correspondence required in the above and states that the documents were first impounded by the Sub-Judge in Appeal Suit No. 70 of 1904-05, against the decree of the Munsiff of Sagar.		
4	To the Registrar of the Chief Court of Mysore, No. Fl. 323, dated the 14th June 1905. Refers the above case under Section 57 of the Stamp Regulation for the decision of the Chief Court.		2
	From the Registrar of the Chief Court, No. 1365—57, dated the 25th August 1905 Forwards copy of the opinion of the Judges of the Chief Court in Civil Referred Case No. 1 of 1905-06 to the effect that the documents in question are exempt from stamp duty under the terms of Section 2 (16) (b), and the exemption to Article 33, Schedule I of the Stamp Regulation, that the question whether the certificate of the Deputy Commissioner should have been held final by the Subordinate Judge of Shimoga, is not one which properly arises on a reference under Section 57 of the Stamp Regulation and that it is not convenient to decide it on such reference.		2
6	To the Deputy Commissioner, Shimoga District, the Deputy Commissioners of other Districts, the Inspector-General of Registration and the Registrar, Chief Court, No. Fl. 2012-21, dated the 16th September 1905. Communicates the foregoing opinion of the Chief Court for information and guidance.		3

1904.

GENERAL AND REVENUE SECRETARIAT.

SEPARATE REVENUE FOR SEPTEMBER.

NOTES.

File No. 107 of 1904.

Whether the Deputy Commissioner is bound by the decision of the Civil Court or the latter by the former as to the liability or otherwise to stamp duty of a document coming before a Civil Court.

From the Deputy Commissioner of the Shimoga District, letter No. 811—565, dated 26th April 1905.

States that the Sub-Judge of Shimoga forwarded to him two plain paper lease deeds, that the deeds have been registered, that they were certified to by him under Section 40 as exempt from stamp duty, but the Sub-Judge has recorded a declaration under Section 61 (2) of the Stamp Regulation, and requests therefore definite orders on the subject.

Under Section 40 (1) (*a*), if the Deputy Commissioner is of opinion that an instrument sent to him under Section 38 (2) is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be, and Section 40 (2) lays down that every certificate made by the Deputy Commissioner as above *shall*, for the purposes of this Regulation, *be conclusive evidence of the matters stated therein*. In the present case, the Sub-Judge of Shimoga has ignored the certificate made by the Deputy Commissioner of Shimoga that the documents are exempt from stamp duty, perhaps under the impression that it is not a final order, and recorded a declaration under Section 61 (2). The Deputy Commissioner feels doubt as to whether the Sub-Judge is competent to do this and whether his certificate made under Section 40 (1) (*a*) is not final, and solicits definite orders on the subject

2. Closely following the words of Section 40 (2) it cannot without doubt be said that the Deputy Commissioner's certificate is a final order against which no appeal lies. The Sub-Judge cannot also record the declaration under Section 61 (2) unless the case has come up before him as an Appellate authority or there has been a requisition for it from the Deputy Commissioner. But in the case in question, the Sub-Judge has recorded the declaration not upon the requisition from the Deputy Commissioner. Whether he has done it as an Appellate authority, it is not clear.

3. The documents submitted by the Deputy Commissioner with the letter under disposal, however, seem to be exempt from stamp duty as certified to by the Deputy Commissioner.

Submitted for orders.

T. G. K. R. R. A

11-5-05.

4. The facts of the case are not clear. The leases in question appear to have been first produced before the Munsiff in Miscellaneous Case No. 266 (1901-02), on the 7th July 1902. On Munsiff's application, the Sub-Judge appears to have forwarded the documents to Deputy Commissioner, who, on the 31st March 1905, certified they were exempt from stamp duty. It may here be observed that the Munsiff himself was competent to admit the documents in evidence, on payment of the proper duty and penalty, under Section 38, clause (1). Clause (2) of the same section, under which reference appears to have been made by the Sub-Judge on the 1st March 1905, does not, I submit, apply to a case like the present, in which the Court or officer receiving a document has authority to receive evidence and admit the instruments in evidence, on payment of duty and penalty.

5. Section 61 (1) applies to a Court of revision or appeal. I presume that, after Deputy Commissioner returned the documents with his certificate and Munsiff had disposed of the case, the matter came up before the Sub-Judge in appeal. If so, he was competent to make the

declaration referred to in the present communication of the Deputy Commissioner, and the only course now open to the Deputy Commissioner is that indicated in clause (4) of Section 61.

Submitted to Secretary.

T. SATYARAJ CHETTY.
15-5-05.

To the Deputy Secretary for favor of opinion.

B. K. VENKATA VARADA IYENGAR.
16-5-05.

6. The facts are insufficient to enable me to express an opinion. The entire correspondence in original between the Deputy Commissioner and the Sub-Judge may be obtained, together with information as to the nature of the proceeding in which the deeds were first impounded, and of that in the course of which the Sub-Judge recorded a declaration under Section 61 (2) of the Stamp Regulation.

K. S. CHANDRASEKHARA IYER.
29-5-05.

T. SATYARAJ CHETTY.
29-5-05.

Call for the references.

B. K. V.
31-2-05.

Draft submitted.

M. T.
31-5-05.

B. B. A.

Draft passed.

T. SATYARAJ CHETTY.
31-5-05.

To the Deputy Commissioner, Shimoga, No. Fl. 8204, dated the 5th June 1905.

Calls for the above papers and information.

From the Deputy Commissioner, Shimoga, No. 1014-714, dated the 12th June 1905.

Forwards the correspondence between himself and the Sub-Judge of Shimoga, regarding the levy of stamp duty on the documents in question and states that they (documents) were first inpounded by the Sub-Judge in Appeal Suit No. 70 of 1904-05 (a copy of judgment in the records) against the decree of the Munsiff of Sagar.

7. The document was first produced before the Munsiff in Miscellaneous Case No. 266 of 1901-02, and they went up to the Sub-Judge with an appeal. In his judgment in the Appeal Suit he remarked that "the Munsiff was wrong in admitting them in evidence without recover-
" ing duty and penalty on them..... ..... Perhaps the Munsiff was led away by the fact
" that they were both registered. The Sub-Registrar perhaps erroneously supposed that they fell
" under the exemption and wrongly registered them. They will be now impounded and sent to
" the Deputy Commissioner of Shimoga in due course." The documents were accordingly sent to the Deputy Commissioner. He thought that they fell under exemption to Article 33, Schedule I of the Stamp Regulation, recorded his certificate on them evidently thinking that they were sent to him by the Sub-Judge under Section 38 (2), and returned them to the Sub-Judge with his docket No. 2338, dated the 25th March 1905 Thereupon the Sub-Judge recorded an order to the effect that his remark in his judgment was a declaration made under Section 61 (2), that the documents and copy of his judgment were sent to the Deputy Commissioner under Section 61 (3), and that the documents are again sent to the Deputy Commissioner so that may take action under Section 61 (4).

Submitted.

T. G. K. B. B. A.
15-6-05.

Submit the file to the Deputy Secretary.

T. SATYARAJ CHETTY.
16-6-05.

9. The declaration made by a Court of Appeal or reference under Section 61 of the Stamp Regulation seems to be an act of a quasi-judicial nature ; and, therefore, the opinion or certificate of the Deputy Commissioner would not be binding upon the Court in the exercise of its discretionary power.

On the other hand, neither is the Court's declaration itself final. For, should the Deputy Commissioner feel dissatisfied with it, it is open to him to refer the matter under Section 56 for the decision of Government, who may in turn seek the decision of the Chief Court under Section 57

10. In the case of the documents, Exhibits B & D, I am not sure that the Sub-Judge was right in denying to them the applicability of the exemption provided in Article 33, on the ground (among others) that they were for fixed terms exceeding one year. For, if the exemption clause is carefully read, we shall find that, whatever the term may be, the exemption can be claimed if the average annual rent does not exceed Rs. 100.

11. The question raised being one of some importance, I would suggest that a reference be made to the Chief Court.

K. S. CHENDRASEKHARA AIYAR.
20-6-05.

Submitted to Secretary.

T. SATYARAJ CHETTY.
[illegible]-6-05.

For a draft to the Chief Court in consultation with the Deputy Secretary, detailing the case and giving the opinion of the Government

B. K. VENKATA VARADA IYENGAR
22-6-05

Draft submitted.

T. G. K. B. B. I
23-6-05.

Draft submitted to Secretary through the Deputy Secretary.

T. SATYARAJ CHETTY.
28-6-05.

This draft is all right.

K. S. CHENDRASEKHARA AIYAR,
28-6-05.

Draft submitted to the Dewan Saheb through the 2nd Councillor.

B. K. VENKATA VARADA IYENGAR
29-6-05.

Draft may issue.

C. M
3-7-

Draft approved by the Dewan Saheb.

To the Registrar of the Chief Court of Mysore, No. Fl. 323, dated the 11th July 1905

Refers the above case for the decision of the Chief Court, under Section 57 of the Stamp Regulation.

From the Registrar, Chief Court, No. 1365-57, dated the 25th August 1905.

Forwards a copy of the opinion of the Judges of the Chief Court in Civil Referred Case No. 1 of 1905-06, to the effect that the documents in question are exempt from stamp duty under the terms of Section 2 (16) (*b*) and the exemption to Article 33, Schedule I of the Stamp

Regulation that the question whether the certificate of the Deputy Commissioner should have been filed by the Subordinate Judge is not one which properly arises on a reference under Section 57 of the Regulation and that it is not convenient to decide it on such reference.

Submitted for orders to Secretary.

T. G. K.

N. K.

28-8-05.

T. SATYARAJ CHETTY.

28-8-05.

Send a copy of the opinion of the Chief Court to the Deputy Commissioner in reply to his reference.

B. K. VENKATA VARADA IYENGAR.

29-8-05.

Draft submitted accordingly.

T. G. K. 29-8-05.

N. K. 29-8-05.

13. The point decided by the Chief Court is so important and of so general application in regard to agricultural leases that I venture to suggest that the correspondence together with the opinion of the Chief Court be printed *in extenso* and communicated to all Deputy Commissioners and to the Inspector-General of Registration and also published in the *Mysore Gazette* for general information.

Draft submitted to Secretary.

T. SATYARAJ CHETTY.

31-8-05.

Draft submitted to the Dewan Saheb through the 2nd Councillor.

B. K. VENKATA VARADA IYENGAR.

31-8-05.

May issue.

C. M.

2-9-05.

Draft passed by the Dewan Saheb.

Issue

B. K. VENKATA VARADA IYENGAR.

6-9-05.

To the Deputy Commissioner, Shimoga District, the Deputy Commissioners of other Districts, the Inspector-General of Registration and the Registrar, Chief Court, No. Fl. 2012-21, dated the 16th September 1905.

Communicates the foregoing opinion of the Chief Court for information and guidance.

Whether the Deputy Commissioner is bound by the decision of the Civil Court as to the former as to the liability or otherwise to stamp duty of a document coming before a Civil Court.

FILE No. 107 of 1904-05.

From M. S. Narayana Rao, Esq., Deputy Commissioner, Shimoga District, to B. K. Venkata Varada Iyengar, Esq., Secretary to the Government of His Highness the Maharaja of Mysore, General and Revenue Department, Bangalore, letter No. 811-56, dated the 26th April 1905.

Serial No. 1.

I have the honor to state that the Sub-Judge of Shimoga ... with his docket No. 138 of 1st March 1905, two impounded plain paper lease deeds under the Stamp Rules. The lease deeds, although executed on plain paper, have been registered in the Sub-Registry Office, Sagar, probably under the impression that they were exempt from Stamp duty under Article 33 of Schedule I of the Mysore Stamp Regulation, II of 1900. As I was also of the same opinion, I recorded a certificate under Section 40 and returned the deeds to the Sub-Judge who has drawn up a proceedings to the effect that he recorded a declaration under Section 61(2) of the Stamp Act, that the deeds were chargeable with duty * as they do not fall under exemption to Article 33 and have returned the instruments for taking further action.

* Instrument marked B is liable to duty, as bond under 33(a) ii on				Rs.	60	0	0
Do	do	D	do	conveyance	,,	50	0	0

The question for decision in the present case is whether the Deputy Commissioner is bound by the decision of the Civil Court or whether it is the Civil Court that should be by the decision of the Deputy Commissioner, as to the liability or otherwise to stamp duty of a document coming before the Civil Courts; and I beg to solicit definite orders on the subject.

The two deeds in question are herewith forwarded for reference and kind retnrn.

From B. K. Venkata Varada Iyengar, Esq., Secretary to the Government of His Highness the Maharaja of Mysore, to M. S. Narayana Rao, Esq., Deputy Commissioner of the Shimoga District. letter No. Fl. 8204-S. R. 107-04-2, dated the 5th June 1905.

Serial No. 2.

Adverting to your letter No. 811-565, dated the 26th April 1905, soliciting orders as to whether the Deputy Commissioner is bound by the decision of the Civil Court as to the liability or non-liability to the stamp duty of a document coming before the Civil Court, I am to request you to forward to this office the entire correspondence, in original, between the Sub-Judge and yourself, and furnish information as to the nature of the proceeding in which the deeds were first impounded and of that in the course of which the Sub-Judge recorded a declaration under Section 61(2) of the Stamp Regulation. The documents received with your letter under reference are herewith returned for reference and re-submission.

From M. S. Narayana Rao, Esq., Deputy Commissioner, Shimoga District, to B. K. Venkata Varada Iyengar, Esq., Secretary to the Government of Mysore, General and Revenue Department, letter No. 1014-714, dated the 12th June 1905

Serial No. 3.

With reference to your letter No. Fl. 8204—S. R. 107-04-2, dated 5th June 1905, calling for the entire correspondence in original between the Sub-Judge of Shimoga and this office regarding the levy of stamp duty on certain documents, I have the honor to forward herewith the marginally noted communications on the subject.

Sub-Judge's docket No. 138, dated 1st March 1905.
This office reply No. 2338, dated 25th March 1905.
Sub-Judge's order No. 204, dated 27th March 1905.

The documents in question were first impounded by the Sub-Judge in Civil Appeal No. 70 of 1904-05 against the decree of the Munsiff of Sagar on the file of his Court. Copy of the judgment is in the file and para 12 thereof forms the declaration.

The documents returned with the letter under reply are herewith re-submitted.

Whether the Deputy Commissioner is bound by the decision of the Civil Court or the latter by the former as to the liability or otherwise to stamp duty of a document coming before a Civil Court.

From B. K. Venkata Varada Iyengar, Esq., Secretary to the Government of His Highness the Maharaja of Mysore, to the Registrar of the Chief Court of Mysore, letter No. Fl. 323-S. R. 107-04-4, dated the 11th July 1905.

I have the honor to request you to be so good as to lay the following state- **Serial No. 4.**
ment of a case for the decision of the Chief Court under Section 57 of the Stamp Regulation, No. II of 1900.

2. The Munsiff of Sagar in Miscellaneous Suit, No. 266 of 1901-02, admitted in evidence without objection, two unstamped but registered documents marked "B" and "D" purporting to be leases containing stipulations as specified below :—

In "B" the executant undertakes to cultivate the land therein mentioned for a period of two years and to pay to the lessor every year a fixed rent of Rs. 60 worth of paddy.

In "D" the stipulation is to cultivate the land therein mentioned for four years and to pay an annual rent of Rs. 50 worth of paddy.

3. In appeal the Sub-Judge of Shimoga was of opinion that both the documents were subject to payment of stamp duty and penalty and accordingly impounded and forwarded them to the Deputy Commissioner.

4. The Deputy Commissioner certified under Section 40 that the documents fell under the exemption to Article 33, Schedule I of the Stamp Regulation and sent them back to the Sub-Judge who again returned them to the Deputy Commissioner with a declaration under Section 61 (2) and copy of his judgment which was in these terms :—

"The Munsiff was wrong in admitting them in evidence without recovering duty and "penalty on them. Exhibit 'B' is liable to duty as a bond on the amount of Rs. 60 under "Article 33 (a) ii, and Exhibit 'D' as a conveyance on the amount of Rs. 50 under Article "33 (a) iii of Schedule I of the Stamp Regulation, II of 1900."

5. The Deputy Commissioner has taken exception to the action of the Sub-Judge on the ground that under Clause 2, Section 40, his certificate is conclusive and final as to the matters therein stated, and raised the question whether the Deputy Commissioner is bound by the decision of the Civil Court (Sub-Judge) or whether the latter should be so bound by the certificate already made by the Deputy Commissioner.

6. The Government are of opinion that the declaration made by a Court of Appeal or reference under Section 61 of the Stamp Regulation seems to be an act of a quasi-judicial nature, and, therefore, the opinion or certificate of the Deputy Commissioner is not binding on the Court in the exercise of its discretionary power.

7. On the other hand neither is the Court's declaration itself final, for, should the Deputy Commissioner feel dissatified with it, it is open to him to refer the matter under Section 56 for the decision of Government who may in turn seek the decision of the Chief Court.

8. In the case of the documents "B" and "D" referred to above, it cannot be said that the Sub-Judge was right in denying to them the applicability of the exemption provided in Article 33 on the ground among others that they were for fixed terms exceeding one year. For, if the exemption clause is carefully read, it will be found that whatever the term may be, the exemption can be claimed if the average annual rent does not exceed Rs. 100.

9. The two documents referred to above and the correspondence received from the Deputy Commissioner are herewith forwarded for reference and obliging return.

From V. A. Rajaratna Mudaliar, Esq., Registrar, Chief Court of Mysore, to B. K. Venkata Varada Iyengar, Esq., Secretary to Government, General and Revenue Department, letter No. 1365-57, dated the 25th August 1905.

Adverting to your letter No. Fl. 323—S. R. 107-04-4, dated 11th July 1905, I am directed to forward copy of opinion in Civil Referred Case No. 1 of 1905-06. **Serial No. 5.**
The enclosures received with your letter are herewith returned.

Proceedings of the Government of His Highness the Maharaja of Mysore, Financial (Separate Revenue), September 1905.

Whether the Deputy Commissioner is bound by the decision of the Civil Court or the latter by the former as to the liability or otherwise to stamp duty of a document coming before a Civil Court.

ENCLOSURE.

In the Chief Court of Mysore at Bangalore, Monday, the 21st day of August 1905.

Present.

Mr. Justice A. E. Staley, Chief Judge, Mr. Justice A. Rangasami Iyengar, Judge, and Mr. Justice H. V. Nanjundayya, Judge.

Civil Referred Case No. 1 of 1905-06, by Government for adjudication of stamp duty with regard to two * documents held by the Sub-Judge of Shimoga in appeal to be liable to duty under Article 33 (*a*) ii and 33 (*a*) iii of Schedule I of Stamp Regulation, II of 1900.

* Exhibits B and D in Mis. No. 266 of 1901-02 on the file of the Munsiff of Sagar.

Upon perusing the case as stated in the Secretary's letter No. Fl. 323—S. R. 107-04-4 dated 11th July 1905, the Court pronounced the following :—

Opinion.

This is a reference under Section 57 (1), Regulation II of 1900, by the Chief Controlling Revenue Authority for the opinion of the Chief Court.

The two documents sent under reference are marked B and D. They are agreements to cultivate at reserved rents not exceeding Rs. 100 in each case. In our opinion they are exempt from stamp duty under the terms of Section 2 (16) (*b*) and the exemption to Article 33, Schedule I of the Regulation.

A further question raised in the reference is this. The Munsiff of Sagar admitted the documents unstamped without objection. The Subordinate Judge of Shimoga was of opinion that the documents were subject to payment of stamp duty and penalty, and therefore impounded and forwarded them to the Deputy Commissioner. The latter returned them to the Subordinate Judge with an opinion that they were exempt from stamp duty. The Subordinate Judge returned them again to the Deputy Commissioner with a declaration under Section 61 (2) of the Regulation. The Deputy Commissioner has raised the question whether he is bound by the finding of the Sub-Judge or whether the latter is bound by the certificate of the Deputy Commissioner. This question has been also referred to us with the opinion that the Subordinate Judge was not bound by the certificate of the Deputy Commissioner, and that if the latter is dissatisfied, his proper course is to refer the matter to Government (that is, as the Chief Controlling Revenue Authority) who, may in turn, seek the opinion of the Chief Court. We think that, since Section 57 (1) of the Regulation allows any case as to the amount of duty with which an instrument is chargeable coming to the notice of the Chief Controlling Revenue Authority to be referred by the latter to the Chief Court, that the present reference has been properly made as to the amount of duty to be charged. The question whether the certificate of the Deputy Commissioner should have been held final by the Subordinate Judge is not one which properly arises on a reference under Section 57 of the Regulation, and we do not think it is convenient to decide it on such reference.

To the Deputy Commissioner of the Shimoga District, the Deputy Commissioners of other Districts the Inspector-General of Registration and the Registrar of the Chief Court of Mysore. No. Fl. 2012-21—S. R. 107-04-6, dated the 16th September 1905.

The foregoing opinion of the Chief Court will be communicated to the Deputy Commissioner of Shimoga with reference to the correspondence ending with his letter No. 1014—714, dated the 12th June 1905, and to all Deputy Commissioners of Districts and also to the Inspector-General of Registration for information and guidance. **Serial No. 6.**